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The Honorable Ronald B. Leighton

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Attorneys for Plaintiff Olympic Forest Coalition

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

OLYMPIC FOREST COALITION, a Washington
non-profit corporation,

Plaintiff,

v.

COAST SEAFOODS COMPANY, a Washington
corporation,

Defendant.

Case No. 3:16-cv-05068-RBL

PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION FOR
ENTRY OF AN AMENDED
ORDER GRANTING
INTERLOCUTORY REVIEW

NOTED: August 19, 2016

Plaintiff Olympic Forest Coalition submits this response to Defendant Coast Seafoods Company's motion for entry of an amended order certifying interlocutory review (Doc. #32).

Plaintiff opposes Defendant's motion for all the reasons stated in its response to Defendant's motion for interlocutory review, which Plaintiff hereby incorporates by reference and asks this Court to reconsider. See Doc. #29.

1 Plaintiff also opposes entry of Defendant's new proposed order because it includes con-
2 clusions of law or findings of fact that have not been presented to or ruled upon by this Court.

3 Paragraph two of Defendant's new order states:

4 The question of law presented in the Order is whether the Clean Water Act, 33
5 U.S.C. §§ 1251-1376, requires an aquatic animal production facility that is not a
6 concentrated facility under 40 C.F.R. § 122.24, but that discharges effluent from a
7 discrete conveyance, to obtain a National Pollutant Discharge Elimination System
("NPDES") permit.

8 See Doc. #32-1 at 1. Plaintiff objects because the parties did not brief, and this Court did not
9 rule, that Defendant's facility is "an aquatic animal production facility that is not a concentrated
10 facility under 40 C.F.R. § 122.24." Accepting Defendant's new order risks establishing law of
11 the case on factual or legal questions that were not presented to or ruled upon by this Court.

12 In seeking interlocutory review Defendant filed—and invited this Court to enter—a pro-
13 posed order that is jurisdictionally defective under well-established law. See Doc. #27-1; Couch
14 v. Telescope, Inc., 611 F.3d 629, 633 (9th Cir. 2010). Defendant did not comply with Couch
15 even though Defendant cited that case in its motion for interlocutory review and even though
16 Plaintiff relied extensively on that case in opposition. Plaintiff would gladly assist Defendant on
17 this point if interlocutory review would not substantially delay Plaintiff's ability to obtain relief.
18 But because interlocutory review is likely to result in two appeals in this case, Plaintiff very re-
19 spectfully requests that this Court deny Defendant's motion for entry of the proposed amended
20 order (doc. #32-1) and that this Court instead reconsider its July 25, 2016 order (doc. #31) and
21 now deny Defendant's motion for interlocutory review (doc. #27).

22
23
24 RESPECTFULLY SUBMITTED this 2nd day of August 2016.

25 s/Paul A. Kampmeier
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6 **CERTIFICATE OF SERVICE**

7 I, Paul Kampmeier, hereby certify that on August 2, 2016 I electronically filed
8 PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR ENTRY OF AN AMENDED
9 ORDER GRANTING INTERLOCUTORY REVIEW, and this CERTIFICATE OF SERVICE,
10 with the Clerk of the Court using the CM/ECF system, which will send notification of such filing
11 to Hong N. Huynh and Joseph Vance, counsel for Defendant Coast Seafoods Company.

12 s/ Paul A. Kampmeier
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